

**SANITIZED DECISION – 06-433 MFE – BY GEORGE V. PIPER, ALJ –
SUBMITTED for DECISION on OCTOBER 15, 2006 – ISSUED on OCTOBER 27,
2006**

SYNOPSIS

MOTOR FUEL EXCISE TAX—BURDEN OF PROOF MET FOR VACATING ASSESSMENT – Although the provisions of W. Va. Code § 11-14C-et seq. require that all importers pay motor fuel excise taxes on fuel shipments, including diversions and imports, an assessment of motor fuel excise tax will be vacated when Petitioner submits documentary evidence supporting its statements under oath in its petition for reassessment that said taxes were in fact paid, and Respondent fails and/or refuses to specifically rebut that evidence.

FINAL DECISION

On July 15, 2006, the Commissioner or Respondent by the Internal Auditing Division (the Division) issued a motor fuel excise tax assessment against the Petitioner. The assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 14C of the West Virginia Code, for the period ended September 30, 2005, for a tax in the amount of \$, interest, computed through July 15, 2006, of \$, and additions to tax of \$, for a total liability of \$. Written notice of the assessment was served on the Petitioner as required by law.

Thereafter, by mail postmarked July 25, 2006, Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. *See* W. Va. Code § 11-10A-8(1) [2002] and 11-10A-9(a)-(b)[2002].

In due course the presiding administrative law judge contacted the parties and advised them that the matter was to be submitted for decision on documents only, in lieu of holding a hearing in person, because he determined that their appearances in person were not necessary in order to render a decision on the merits.

No specific documentation on the merits was submitted by the required due date; however, this tribunal has issued numerous decisions on the point involved, and we will rule in this case in accordance with prior decisions.

FINDINGS OF FACT

1. On June 8, 2006, the Division sent correspondence to Petitioner stating that it had received its motor fuel importer report for the month of September, 2005; however, three (3) diversions (103960, 103961, 103962) were found with no record of taxes collected and three (3) import confirmation numbers (105862, 105863, 105864) were also found with no record of taxes collected.

2. On June 13, 2006, Petitioner responded by letter stating that a copy of the enclosed check in the amount of \$ represents payment for the three (3) unpaid diversions and that regarding the three (3) import numbers for which no amount of tax was found to have been paid by Respondent, the same had all been paid in September under three (3) manifest numbers (667364, 667376, 667356) which replaced import numbers 105862, 105863 and 105864.

3. In its petition for reassessment, Petitioner repeated its arguments in support of its claim that all motor fuel excise taxes were, in fact, paid and had submitted documentation, etc. in support thereof.

DISCUSSION

The only issue to be decided is whether Petitioner has met its burden of proof by showing that the motor fuel excise tax assessment issued pursuant to W.Va. Code §11-14C-et seq. had been paid.

In a proceeding before this tribunal, the burden of proof always rests with the Petitioner; however, it is incumbent upon the Respondent to carry its burden of going forward with the evidence to specifically rebut the specific documentary evidence of the Petitioner supporting the petition, not to merely rely on the formal answer generally denying the allegations of the petition itself.

In this instance, Petitioner submitted a copy of a cancelled check in the amount of \$, proving that the three (3) diversion shipments had been paid and further signed, under potential penalty of misdemeanor offense, a statement showing that it had paid the remainder of the assessment under three (3) replacement manifest numbers.

Again, a general denial in the formal answer is not sufficient to carry Respondent's burden of going forward with the evidence (here, documentary evidence was all that was needed) to refute specific documentary evidence supporting Petitioner's petition for reassessment.

CONCLUSIONS OF LAW

Based upon all of the above it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for

reassessment, the burden of proof is upon a petitioner-taxpayer, to show that the assessment is incorrect and contrary to law, in whole or in part. *See* W. Va. Code § 11-10A-10(e) [2002] and W. Va. Code St. R. § 121-1-63.1 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has carried the burden of proof with respect to its contention that, based upon the evidence, its company did pay all of the motor fuel excise tax assessment. *See* W. Va. Code St. R. § 121-1-69.2 (Apr. 20, 2003).

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the motor fuel excise tax assessment issued against the Petitioner, for the period ended September 2005, for tax of \$, interest of \$, and additions to tax of \$, totaling \$ should be an is hereby **VACATED**, and the Petitioner owes no further motor fuel excise tax liability for the period in question.